IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 175 of 2007

With

CRIMINAL MISC.APPLICATION No. 778 of 2007
In
CRIMINAL APPEAL No. 175 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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MINESHBHAI KANTUBHAI PATEL - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :

MR SHAKEEL A QURESHI for Appellant(s) : 1,
MR HL JANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 14/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. The present appellant-original accused has filed this appeal being aggrieved and dissatisfied with the judgment and order dated 30-11-2006 delivered by the learned Addl. Sessions Judge and Presiding Officer, Fast Track Court No.3, Vyara, in Sessions Case No.45 of 2006 whereby the appellant has been convicted and sentenced to undergo RI for life and fine of Rs.5000/-, in default, 6 months RI for the offence punishable under Sec.302 of IPC.

2. When the appeal has come up for admission hearing, learned counsel for the appellant was having copies of oral as well as documentary evidence. However, for the purpose of deciding the same, in the interest of justice, we have also called for the record and proceedings and after receiving the same, we have given opportunity to the

learned counsel for the respective parties to go through the same and the matter was adjourned.

3. Today, we have heard learned counsel for the appellant, Mr.S.A.Qureshi and learned APP, Mr.H.L.Jani, at length.

4. The case of the prosecution in short is that on 1-4-2006 at about 12.00 noon, when the victim and the appellant, who were residing together under one roof, were in their residential house situated in Village Dedvasan, Jhadi Falia, Taluka Mahuva, District Surat, their neighbours and other persons heard a noise of shouting for help from the mouth of the victim and, therefore, all came out from their respective houses and they saw that the appellant was dragging the victim by putting iron chain, which has been used to tie the animals, on the neck of victim from inside the house to outside and from outside to inside the house and was also beating her. He was also having knife in one of his hands and was administering threat

to all persons gathered there not to enter into the compound or his house and if any one dared to do so, they would be faced with dire consequences. Therefore, nobody was in a position to save the victim. The appellant dragged and beaten her in such a manner that ultimately she fell down in front of the house. Leaving the victim there itself, the appellant ran away from the scene of offence. The people, who gathered there, informed the police in pursuance of which, police from Mahuva Police Station came to the scene of offence and recorded the statement given by the complainant and it was registered as C.R.No.I-21 of 2006 with Mahuva Police Station for the offence punishable under Section 302 of the Indian Penal Code and handed over investigation to concerned Investigating Officer. Investigating Officer started investigation into the matter and prepared panchnama of scene of offence in presence of panchas. He also recorded statements of various witnesses, drew various

panchnamas, seized muddamal and sent the same to FSL with forwarding letter. Upon receipt of FSL and post mortem reports, same were kept in investigation file. Upon completion of investigation, charge sheet was submitted against the accused in the Court of learned Judicial Magistrate (First Class), Bardoli.

5. As the case alleged against the accused was triable exclusively by the Court of Sessions, learned J.M.F.C., Bardoli, committed the case to the Court of Sessions at Vyara where the case was numbered as Sessions Case No.45 of 2006. On production of the accused, the learned Addl. Sessions Judge, Vyara, framed charge against the accused. The accused pleaded not guilty to the charge and prayed of trial.

6. To prove the guilt against the accused, the prosecution examined in all 13 witnesses and also produced and placed reliance upon 12 documentary evidences. On completion of recording of oral evidence, learned APP submitted the closing pursis and, therefore,

the learned Addl. Sessions Judge recorded further statement of the accused under Sec.313 of the Code of Criminal Procedure qua incriminating question. Thereafter, after giving opportunity to the learned advocates appearing for the respective parties and after considering the written arguments submitted by the appellant accused, learned Addl. Sessions Judge, Vyara, delivered the impugned judgment and order whereby the appellant-accused was convicted and sentenced to suffer for life as aforesaid leading to filing of the present appeal.

7. It is mainly argued bhay learned counsel for the appellant, Mr.Qureshi, that the complainant and other alleged eye witnesses are not witnesses of incident. Taking us through the evidence of complainant and other three eye witnesses, it is argued that there are material contradictions among the statements of alleged eye witnesses and, therefore, they are not witnesses of incident. There are no other evidence also to

connect the accused with the crime in question. It is also argued that it was a day time and all male members of the village were not at home. Though the alleged women eye witnesses were not present at the place of incident or at home, they have been cited as witnesses later on. It is further argued that even as per the say of the prosecution, accused was not found at home but was arrested from outside and, therefore, according to him, his presence is not established at the scene of offence. He also took us through the seizure panchnama of the clothes worn by the accused at the time of incident and argued that it is concocted one and, therefore, Court should not accept the same. Lastly, it is argued that though it is a homicidal death, prosecution has failed to connect the same with the accused and, therefore, accused is required to be acquitted.

8. We have gone through the evidence on record shown to us by the learned counsel for the

appellant mainly of eye witnesses i.e. the complainant, P.W.2 Hiteshbhai Bhanubhai Patel Ex.13 through whom prosecution has proved the complaint Ex.14 as well as of other eye witnesses namely, P.W.3 Gangaben Kiranbhai Patel Ex.16, P.W.4 Sarojben Sureshbhai Patel Ex.17 and P.W.5 Lilaben Gulabbhai Patel Ex.18 along with their cross examination.

9. It is required to be noted that through the evidence of above referred four eye witnesses as well as from the panchnama of scene of offence Ex.23, oral evidence of panchas namely, P.W.7 Shaileshbhai Shankarbhai Patel Ex.22, P.W.8 Shaileshbhai Somabhai Patel Ex.24, the prosecution has proved that incident in question has taken place at Jhadi Falia, Dedvasan Village in the residential house of the appellant and the victim Babita. It is also proved that the appellant and victim Babita were staying together in the said house under one roof and people have accepted them as husband and wife. It is also established from the evidence on record that

prior to the incident, there was a dispute between the appellant and the victim Babita and it was in the mind of the appellant accused that Babita would not like to stay with him any more. This resulted into quarrel between the appellant and the victim and as a consequent of which, on the fateful day, the appellant has beaten her and also put iron chain, which has been used to tie the animals, on her neck. Not only that, he has dragged the victim from inside the house to outside and vice versa and she was shouting for help in a helpless condition. On hearing the same, people including the above referred eye witnesses gathered at the scene of offence. However, since it was threatened by the appellant, who was armed with knife, of dire consequences if any one dared to enter into the house of the appellant, nobody could enter into the house to save the victim for fear of their lives and the appellant has killed his wife in presence of all the afore referred witnesses.

10.It is also required to be noted that above referred four eye witnesses are witnesses of incident. They have deposed about the incident in toto by giving detailed account by way of cross examination. It is also required to be noted that on material points, there is no cross examination namely, whether the appellant was there in the house along with his wife, whether he was beating his wife in presence of all witnesses, whether he has put iron chain on the neck of victim and dragged her and she was ultimately killed. Not a single suggestion to that effect has been made to any of the afore referred witnesses. The only line of cross examination was that the complainant, P.W.2, Hitesh Bhanubhai Patel Ex.13 was not present at the time of incident. This has been asked to all the four witnesses including Hitesh himself. However, facts remain that not a single question has been asked to other two witnesses as to whether they were present or have seen the incident or not. All the three

eye witnesses have deposed that they were present at the time of incident and have seen the incident. They have admitted that after killing his wife, the appellant left the premises as a brave person and nobody could do anything. Since the time being 12 noon and the persons being ladies would be there in their houses and hence, their presence cannot be discarded since they are neighbours staying in the same vicinity unless proved otherwise. It is to be noted that otherside could not establish that they were not present at the time of incident. Not only that, not a single suggestion to that effect has been put to the witnesses concerned. In view of the above, according to us, all the afore referred four witnesses are witnesses of incident. Merely because a woman witness has admitted in her cross examination that the complainant came later on at the scene of incident after half an hour, the whole complaint and evidence of the complainant cannot be discarded. Her evidence cannot be

taken in part but is required to be read as a whole. On reading her evidence as a whole, it is established that she has categorically admitted even in cross examination that she has seen the incident and later on she has admitted this fact. This leads us to believe that after the incident, the witness left the scene of offence and again after half an hour came to the scene of offence. If we discard the evidence of the complainant and accept the arguments advanced by the learned counsel for the appellant that she is not a witness of incident then, there are other evidence of three independent eye witnesses, who are women neighbours, establishing the case of the prosecution. As stated above, not a single question about their presence has been asked to any of the witnesses. It is required to be noted that these witnesses have identified all the muddamals seized from the scene of offence in Court and they narrated the incident in toto. Apart from that, it is also established that the appellant accused

has been arrested at the earliest i.e. on the same day at night. During his search, clothes worn by him at the time of incident have been seized. Said clothes have been found with bloodstain marks and it has been proved by the prosecution by way of FSL report Ex.38 that it was the human blood of AB group which is of the deceased. This also takes the accused very near to the crime in question. It is not the case of the accused either in cross examination or in his further statement that blood stains found on his clothes were received while handling the body of the deceased. In absence of any cogent and convincing explanation from his side, we are of the opinion that it is a case wherein the prosecution has proved the case against the appellant accused beyond reasonable doubt by way of evidence of afore referred eye witnesses.

11. It is also to be noted that during the course of incident, altercation took place between the appellant and the victim Babita

and the accused felt that the victim did not want to stay with him any further and hence, he brutally killed his wife by beating her and dragging her from inside the house to outside and vice versa by putting iron chain on her neck and since he was not satisfied with the same, he strangulated the victim in presence of witnesses and ultimately the victim has been killed. Thus, the motive has also been proved. It is required to be noted that all these eye witnesses are neighbours knowing each other and the incident has happened at 12.00 noon. The accused armed with knife has threatened the witnesses of dire consequences if anyone entered into his house. In view of the above, there is no question of misidentification or falsely identifying the accused. In short, the prosecution has proved the guilt against the accused beyond reasonable doubt. The aspect of homicidal death has also been proved against the accused beyond reasonable doubt by the prosecution.

12.No other arguments have been advanced by the learned counsel for the appellant and hence, we are not discussing anything further. We however state that it is a case wherein the accused has brutally killed his wife and that too also by putting her in helpless condition in presence of all neighbours which cannot be taken lightly or viewed leniently by the Court. Under the circumstances, the appeal of the appellant does not merit any consideration and is required to be dismissed.

13.This appeal is dismissed.

14.In view of the dismissal of appeal, Criminal Misc. Application No.778 of 2007 for bail does not survive and is disposed of accordingly.

15.Record and proceedings are ordered to be sent back forthwith.

(R.P.DHOLAKIA,J.)

(K.S.JHAVERI,J.)

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